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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/256,981 02/24/99 DRIGGARS

S 4050-002

EXAMINER

QM12/0410

RHODES COAT & BENNETT  
P O BOX 2974  
GREENSBORO NC 27401

FALTICKA

ART UNIT

PAPER NUMBER

3741

DATE MAILED:

04/10/00

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>09/256,981</b>	Applicant(s) <b>Driggs</b>
	Examiner <b>Andy Falik</b>	Group Art Unit <b>3741</b>

- Responsive to communication(s) filed on Feb 24, 1999
- This action is **FINAL**.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- Claim(s) 1-25 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) 13-22 and 25 is/are allowed.
- Claim(s) 1, 6-12, 23, and 24 is/are rejected.
- Claim(s) 2-5 is/are objected to.
- Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been
- received.
  - received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- Notice of References Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). 4
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

## **DETAILED ACTION**

### ***Drawings***

The drawings are considered to be informal because they fail to comply with 37 CFR 1.84(a)(1) which requires black and white drawings using India ink or its equivalent.

Photographs and color drawings are acceptable only for examination purposes unless a petition filed under 37 CFR 1.84(a)(2) or (b)(1) is granted permitting their use as formal drawings. In the event applicant wishes to use the drawings currently on file as formal drawings, a petition must be filed for acceptance of the photographs or color drawings as formal drawings. Any such petition must be accompanied by the appropriate fee as set forth in 37 CFR 1.17(I), three sets of drawings or photographs, as appropriate, and, if filed under the provisions of 37 CFR 1.84(a)(2), an amendment to the first paragraph of the brief description of the drawings section of the specification which states:

The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings have been satisfied.

Art Unit: 3741

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,6,7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by the Experiment No. 2 yarn in Table 4 in col. 11 in 3,894,318.

Claims 1,6-12, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by the plain gauge knitted fabric designated by Staple No.1 in Table 1 in col.7 in 4,071,502. Re the article of apparel limitation in claim 23 "clothes" are disclosed on line 16 in col.1 in the reference. The staple length, filament denier, and fiber type limitations in claims 7-12 are disclosed in columns 3&4 in the reference.

#### *Allowable Subject Matter*

Claims 2-5,8-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13-22,25 are allowed.

#### *Conclusion*

Serial Number: 09/256,981

Page 4

Art Unit: 3741

The prior art knitted fabric in JP 48061789 made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry to the merits of this office action or to any specific features of this communication or earlier communications from the examiner should be directed to Andy Falik whose telephone number is (703) 308-1283. The examiner can normally be reached on Monday-Thursday from 7:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Calvert can be reached on (703) 305-1025. The fax phone number for this Group is (703) 305-3588.

Any inquiry of a general nature such as a missing reference or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861. Any inquiry relating to the drawings should be directed to the Drafting Branch whose telephone number is (703) 305-8404.



**ANDY FALIK  
PRIMARY EXAMINER  
GROUP 3741**

AMF  
April 9, 2000